

**MINUTES**  
**OF THE**  
**ENVIRONMENTAL PROTECTION COMMISSION**  
**MEETING**  
**DECEMBER 9, 2008**

**INGRAM OFFICE BUILDING**  
**7900 HICKMAN ROAD**  
**URBANDALE, IOWA**

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## MEETING MINUTES

### CALL TO ORDER

The meeting of the Environmental Protection Commission was called to order by Vice - Chairperson Charlotte Hubbell at 10:10 a.m. on December 9, 2008 in the Ingram Office Building, Urbandale, Iowa.

### COMMISSIONERS PRESENT

Suzanne Morrow, Secretary  
Charlotte Hubbell, Vice-Chair  
David Petty – arrived at 10:25  
Susan Heathcote  
Henry Marquard, Chair - teleconference  
Paul Johnson  
Shearon Elderkin – teleconference  
Gene Ver Steeg

### COMMISSIONERS ABSENT

Martin Stimson

### ADOPTION OF AGENDA

Move up: Discussion of Air Quality in Schools by Catharine Fitzsimmons to after the Director's remarks

Add: Presentation on Regency Homes default on the loan from DNR under Item 5 – Solid Waste Alternatives Program – Recommendations

Move: Item 6 – Clean Water and Drinking Water State Revolving Loan Fund after lunch

*Motion was made by Sue Morrow to approve the agenda as amended. Seconded by Susan Heathcote. Motion carried unanimously.*

**APPROVED AS AMENDED**

### APPROVAL OF MINUTES

The November minutes are completed but approval has been postponed until the January meeting.

## **DIRECTORS REMARKS**

Director Richard Leopold performed the swear-in ceremony of Gene VerSteeg.

Pat Boddy has accepted the position of Deputy Director. Pat is currently the Director of the Polk County Conservation Board. Ed Tormey, Legal Services Bureau Chief, will be serving as the interim Deputy until Pat starts at the end of January.

Sally Jagnandan will continue to serve as the interim Management Services Division Administrator at least until the end of the fiscal year in June.

Michelle Wilson from our Conservation & Recreation Division will lead the Honey Creek Resort State Park construction project.

### **Understanding the State's role in Climate Change, Energy and Sustainable Practices**

State Natural Resources leaders from across the United States came together for the 2<sup>nd</sup> time at Honey Creek in November to discuss policy on climate change, renewable energy and sustainable practices. The group agreed to form a national organization called State Alliance of Natural Resources (SANR). The next meeting will be held in Maryland sometime in March.

### **Other**

We are working on the implementation and establishing the priorities for the River Basin Management Plan.

The Governor's Water Resources Council will hold its first meeting on December 18<sup>th</sup>. This group is primarily state and federal governments and academic institutions.

We recently hosted the 4-state EPA director meeting at Honey Creek Resort last week.

Paul Johnson suggested that we look at the legislation implemented in Nebraska regarding watersheds. This is something that could be discussed in more detail with Secretary Bill Northey. He also suggested looking at Wisconsin's approach in that they put their fisheries staff in contact with their water quality staff. Richard Leopold said that they have been working with the Department of Agriculture on the basin approach.

Henry Marquard asked about the Governor's recent budget cuts. Richard Leopold said that the press release from the Governor's office on these cuts will be distributed within the hour.

Catharine Fitzsimmons gave an update on the air quality status in schools based on the article recently posted in the Des Moines Register. David Petty suggested that a follow up article be written by the Department and sent to the Des Moines Register.

<b>INFORMATIONAL ONLY</b>
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## **PUBLIC PARTICIPATION**

**MATTHEW BORMANN**, farmer from LuVerne Iowa made comments. I have 600 head of hogs and 600 head of cattle. I also have a hoop barn, which is a roof over a pad of cement. There is no run off, I put cornstalks in it. There is a technicality with this rule coming up, they said I had to classify as a confinement, which means I can't haul my dry manure in the winter time. I produce enough manure for 400 acres of row crop. I feel like I will be penalized by this rule and I'm actually doing the right thing. The consistency of this manure is really thick, it doesn't go anywhere.

The Commissioners asked Mr. Bormann questions about his operations and manure storage capacity.

**VIRGINIA SOELBERG**, submitted the following comments on the rule for applying manure on frozen or snow-covered ground

The Commission is considering a draft rule to regulate the application of manure on frozen or snow-covered ground. The Sierra Club Iowa Chapter has the following comments on the rule.

It is extremely important to regulate such application because manure applied to frozen or snow-covered ground will not be absorbed into the ground or by any crops on the field. Nor can manure be injected into frozen or snow-covered ground. If not absorbed, the manure will run off into surface waters.

We are pleased that this rule will apply to all confinement operations that are required to have a manure management plan or a nutrient management plan and to all open feedlots that are required to have a nutrient management plan. We are concerned, however, that a recent change in the draft exempts operations that have received a notice of violation. The rule was changed to apply only to operations that have had enforcement actions, i.e., administrative orders. This change is problematic because the Iowa DNR is very reluctant to issue administrative orders. So the operator could have had a problem and should be subject to the rule, but because of DNR reluctance to issue an administrative order, the operator would not be regulated under the rule.

Also, the rule states that application is prohibited on frozen ground with slopes of 2 percent or greater unless soil conservation practices are in place and the P-Index rating is less than 2. The rule does not say what conservation practices are contemplated. If there is soil conservation practices that will stop the runoff of manure from frozen ground those practices should be specified in the rule. In addition, the P-Index is essentially a measure of the phosphorous content and erodibility of unfrozen soil. So using the P-Index in this rule gives a false sense of security and should not be used as a factor.

The rule also allows application of manure on frozen ground depending on the slope of the ground. We have not seen any justification for using these particular slope criteria. And there are other criteria that should be considered in addition to slope that may justify prohibition of application of manure to frozen ground even if the slope meets the specifications of the rule. There is special concern, even on minimal slopes, with areas of concentrated flow. These would be small gullies and swales that are the major conduits of runoff, even if slopes are minimal.

The real problem with this rule is that it complicates an issue that should be addressed simply and directly. The rule should just prohibit application of manure on frozen or snow-covered ground. There is no reason that an animal feeding operation should have to apply manure to frozen or snow-covered ground.

**SHANNAN GARRETSON**, from the Iowa Environmental Council addressed the manure on frozen ground issue. The Council generally supports this rule. We ask that you act quickly. This is a proactive approach to protect Iowa's water quality. We look forward to working with the Department.

**CHRIS JONES**, from Des Moines Water Works submitted comments on the Proposed Manure on Frozen and Snow Covered Ground Rule.

The utility believes the proposed rule is well-researched and well-written. The author is knowledgeable and familiar with practices in Iowa, has done a good job of investigating environmentally-sound practices in surrounding states and translating that information into a common-sense approach for Iowa. It is clear, based on ammonia data from this past spring that manure applied in this fashion is a threat to Iowa's streams and drinking water sources.

The utility wishes to emphasize that this proposed rule is only a starting point when approaching water quality problems associated with manure. Some might say that restrictions on the application of manure to frozen ground and snow will do little or nothing to solve Iowa's water quality problems. So they say, why have any rule at all? My response is that our problems are such that no one thing is going to solve them. Some say producers need the option to apply to frozen ground because they cannot be expected to cope with every weather condition and mechanical failure. I guess what we're saying is that downstream users must accept the onus of their inability to cope.

The rule must be considered a tool in what must surely be a kit of many tools that will help us being able to deal with the externalities of animal agriculture. Externalities are costs that are external to a system or market and that are usually socialized. An example for agriculture might be restoring a stream killed off by a manure spill or the cost to remove nitrate from drinking water. [Chris distributed a paper published in 2005 by Erin Tegtmeier and Mike Duffy of the Leopold Center at Iowa State that quantifies the externalities of agriculture.] Using the authors' estimates, which they claim to be conservative, I calculate the external costs of agriculture in Iowa to be somewhere between \$430 million and \$1.3 billion. Should society have some reasonable tools to try and cope with these costs? I think we should, and the proposed rule could be one.

In the watersheds that are Raccoon and Des Moines River Watersheds upstream from our surface water intakes, there exist 3.5 million hogs; 170,000 sows; 540,000 nursery pigs; 320,000 cattle; 18 million chickens and 2.5 million turkeys. How we cope with the untreated waste from these animals, a volume comparable to that produced by 15-20 million human beings, is an unresolved problem. If agriculture's expectation is that we continue to socialize the external costs that



exude from this industry, then it is not a reasonable expectation that society try to manage these costs? The utility believes the proposed rule is one small step in that direction.

Finally, we urge agriculture not to be satisfied with the status quo, or even small, incremental improvements in environmental performance. Until larger leaps are achieved, tools such as the proposed rule will be necessary. The Des Moines Water Works supports the proposed rule as written.

**CINDY TURKLE**, from Turkle Environmental Consultants addressed the Chapter 113 rules that are affecting the small landfills around the state. When the new rules went into effect, the staff implied to these landfills, that if they closed they could close under the whole rule. We have a lot of landfills out there that took advantage of this and budgeted for continuing monitoring and closure based upon what the rules were. However, there is a little tweak to these rules that will make a large cost to these landfills. Many cities and counties have not budgeted for this additional monitoring that is now being required at these landfills. These rules are requiring that when existing landfill well data exceeds two standard deviations over the background concentration, that it automatically has to begin monitoring under the new appendix I parameters. From each well, two samples from the lab cost \$1,200. Most of the landfills have approximately ten wells around the site. What it's doing is sampling parameters that are not even related to what the landfill has had. In essence, what's happening is that closed landfills are being required to extend this money for sampling that probably won't show any more contamination than what we already know. The staff is not sure if this will be a one-time sample. This will be a major economic problem for many counties.

**SONIA SKIDMORE**, commented on behalf of Iowa Citizens for Community Improvement regarding the impaired waterways in Iowa. Almost 40% of the waterbodies don't meet the state water quality standards so we need to be doing something about that. The public needs to be taking action. We also need smart regulations. Today you have two opportunities, one to update Iowa's Code to meet more federal standards, which makes a lot of sense. We also agree that Claire has done a great job with the manure on frozen ground rule. We are in total support for a ban on manure to frozen ground. When thinking about these rules, bear in mind the impaired waters list. It's time to take action.

-----End of Public Participation-----

## **FINAL RULE – AMEND IOWA ADMINISTRATIVE CODE 567 CHAPTER 119 - WASTE OIL**

Tom Anderson, Environmental Specialist Senior in the Environmental Services Division presented the following item.

The Commission is requested to approve the Notice Final Rule to amend Iowa Administrative Code Chapter 119 “Waste Oil”. This rulemaking is in response to House File 2668, passed by the 2008 Iowa Legislature.

Written comments were accepted from October 8 through October 28, 2008, and a public hearing was held on October 28, 2008. No comments were received. This Final Rule is the same as was presented in the Notice of Intended Action with only minor wording changes made by the code editor.

The amended rule includes addition of collection requirements for used oil filters, addition of signage requirements for filter retailers, updating the signage requirements for oil retailers, removal of some of the department’s responsibilities, and removal of the state procurement regulations. The amendments also change the term “waste oil” to “used oil” to be consistent with Chapter 455D.13 and EPA regulations.

The Commission is requested to approve this Final Rule.

*Motion was made by Susan Heathcote to approve the final rule as presented. Seconded by Sue Morrow. Motion carried unanimously.*

**APPROVED AS PRESENTED**

Jon Tack gave an update on the Regency SWAP contract. Currently, the Department has closed the loan and has put a lien on the equipment purchased with the funds.

## **SOLID WASTE ALTERNATIVES PROGRAM – RECOMMENDATIONS**

Tom Anderson, Environmental Specialist in the Environmental Services Division presented the following item.

The Department received 10 proposals, requesting \$418,535 in financial assistance, for consideration during the October 2008 round of funding. Seven (7) projects were selected for funding or additional consideration. If approved they will receive \$197,710 in a combination of forgivable loans and zero interest loans.

The review committee consisted of five persons representing the Land Quality Bureau (Tom Anderson, Jim Bodensteiner), Iowa Society of Solid Waste Operations (Mary Wittry), Iowa Recycling Association (Jeff Rose), and the Iowa Waste Exchange (Julie Plummer).

The table below summarizes recommendations by applicant and project type and by the type of award.

Recommended By Applicant Type	# Awards	Award Amount	Forgivable Loan Portion
Local Government	3	\$136,750	\$65,000
Private For Profit	1	\$20,000	\$20,000
Private Not For Profit	3	\$40,960	\$40,960
Recommended By Project Type	# Awards	Award Amount	Forgivable Loan Portion
Best Practices	5	\$152,710	\$80,960
Market Development	0	\$0	\$0
Education	2	\$45,000	\$45,000
Type of Award	# Awards	Award Amount	Forgivable Loan Portion
Forgivable loan only	5	\$85,960	\$85,960
Forgivable and 0% loan only	2	\$111,750	\$40,000
0% and 3% interest loan only	0	\$0	\$0
0% interest loan only	0	\$0	\$0
3% interest loan only	0	\$0	\$0

At this time, the Department is requesting Commission approval to enter into contracts with selected applicants whose awards will be in excess of \$25,000 subject to satisfactory review of additional requested information as needed.

*Motion was made by Paul Johnson to approve the SWAP recommendations as presented. Seconded by Sue Morrow. Motion carried unanimously.*

**APPROVED AS PRESENTED**

**FINAL RULE – AMEND SUBRULES 113.2(8), 113.2(10) AND RULE 113.3 OF 567-CHAPTER 113 - SANITARY LANDFILLS FOR MUNICIPAL SOLID WASTE: GROUNDWATER PROTECTION SYSTEMS FOR THE DISPOSAL OF NON-HAZARDOUS WASTES**

Alex Moon, Environmental Program Supervisor of the Environmental Services Division presented the following item.

The Commission is requested to approve the Final Rule amending subrules 113.2(8), 113.2(10) and rule 113.3 of 567-Chapter 113 “Sanitary Landfills for Municipal Solid Waste: Groundwater Protection Systems for the Disposal of Non-Hazardous Wastes.”

This amendment arose from public comments to and an objection placed upon subrule 113.2(8) by the Administrative Rules Review Committee pursuant to Iowa Code section 17A.4(5) on December 11, 2007. The Administrative Rules Review Committee determined that subrule 113.2(8) is unreasonable and stated “These members are concerned that subrule 113.2(8) constitutes an improper regulatory taking.” The legal effect of this objection is to shift the burden of proof to the Department in any legal challenge to the subrule. Such legal challenge has been filed.

In June of 2007 the Department proposed and the Commission adopted the existing rule for the following purposes:

1. To provide protection of groundwater to the maximum extent practical in compliance with section 455E.5(1) of the Code of Iowa.
2. To achieve compliance with the Federal Resource Conservation and Recovery Act and applicable regulations adopted by the United State Environmental Protection Agency; and
3. To the extent specific Iowa municipal solid waste landfills have existing groundwater contamination, to minimize the risk of additional contamination at those sites.

In light of the contradictory or unclear positions taken by the U.S. EPA since the adoption of the final rule, the comments received from the regulated public, and the actions of the Administrative Rules Review Committee, the Department has determined it is appropriate to review and revise subrule 113.2(8). Ultimately, the Department has determined that the revision of subrule 113.2(10) and rule 113.3 are necessary to effectuate the revision of subrule 113.2(8).

The Department proposes the rule amendments contained herein as a comprehensive approach to replacement of the prescriptive requirements of current subrule 113.2(8)“c.” The proposed amendments are a hybrid of the multiple options considered by the Department, as outlined in the preamble. These amendments are intended to:

1. Allow the Department to focus compliance efforts on those municipal solid waste landfills (MSWLFs) that have remaining disposal capacity over unlined landfill units that are not in compliance with current liner and leachate collection system requirements.
2. Remove the three-year timeframe for constructing a liner along the sideslope over a non-compliant MSWLF unit by instead allowing site specific conditions to dictate when or if the side liner is necessary.
3. Clarify that waste placement in areas over a previously filled MSWLF unit constitutes a vertical expansion by adding a definition in rule for “vertical expansions.”
3. Clarify that in order to place waste in vertical expansion areas, a separatory liner and leachate collection system must be installed first between the vertical expansion and underlying non-compliant MSWLF unit that meets current rule requirements. This ensures that all waste disposal activities occur over a compliant liner system with leachate collection.

4. Allow an agreed to amount of time for continued waste placement in the vertical expansion area in order to obtain an adequate slope for building the separatory liner and leachate collection system.

5. Remove the definition of “liner” so that it is clear that the separatory liner in the vertical expansion area does not have to be connected to the basal liner in the horizontal expansion area. This is particularly beneficial in instances where the vertical expansion area has already received waste. This would avoid MSWLF owners from having to construct a liner over areas already having a compliant basal liner.

6. Address the objection filed by the Administrative Rules Review Committee in regard to existing subrule 113.2(8)“c.”

7. Reduce the regulatory burden of the 2007 rule revisions on those MSWLFs with remaining disposal capacity only over compliant MSWLF units by not requiring construction of an additional liner over an existing basal liner and leachate collection system.

The Department is also requesting the addition of subrule 113.2(8)“d” to address questions that have arisen in regard to the current closure requirements for sites that were closed pursuant to the previous rule requirements.

The Commission is requested to approve this Final Rule.

*Motion was made by David Petty to approve the Chapter 113 landfill rules as presented. Seconded by Gene Ver Steeg. Motion carried unanimously.*

**APPROVED AS PRESENTED**

Ed Tormey mentioned that the Commission could go into a separate meeting in the near future to discuss the lawsuit.

## **REFERRALS TO THE ATTORNEY GENERAL – MONROE BRANSTAD**

Kelli Book, an Attorney representing the DNR’s Legal Services Bureau presented the following information.

Clay Swanson and Carl Berg from DNR Field Office 2 in Mason City and Scott Grummer from the DNR Fisheries Bureau in Clear Lake were present for any questions.

The DNR seeks referral of Monroe Branstad to the Attorney General’s office for appropriate enforcement action, due to the discharge of sweet corn silage runoff from Mr. Branstad’s cattle operation. The discharge caused a fish kill of over 30,000 fish along the Winnebago River.

Mr. Branstad owns and operates a cattle operation in Forest City. The operation has 900 head of cattle in open lots and 200 head of cattle in confinement buildings. Manure from the confinement buildings is stored in below building pits and the manure from the open lots is scraped from the lots and land applied to nearby fields. This summer the Branstad's added a silage runoff containment basin at the facility.

On August 28, 2008, Scott Grummer, DNR Fisheries Biologist was notified of the dead fish in the Winnebago River.

On August 29, 2008, Carl Berg and Clay Swanson, DNR environmental specialists met Mr. Grummer and began the investigation. Photos and samples were taken at 16 sites. (Pictures were shown.)

Mr. Swanson and Mr. Berg proceeded to Mr. Branstad's cattle operation. They first spoke with Andrew Branstad, Monroe Branstad's son. Andrew stated the operation had just constructed a silage runoff containment basin within the last month. He stated that the Branstad's had spoken to a DNR construction permit engineer regarding the need for permits. The DNR informed them that no permits were needed, but that the facility must control any runoff and leachate from entering the groundwater, surface water and tile lines. Andrew stated that the basin had been pumped twice since it had been constructed. It was pumped into the cattle confinement below building pit.

Mr. Berg checked the road ditch for tile intakes as Monroe Branstad arrived on site. Mr. Branstad showed Carl the tile intake west of the cattle operation. There was a tile blowout about 15 feet east of the intake that was fairly dry. We did see tillage leachate running into the trench. DNR staff did take samples from the runoff flow. The field office staff asked Mr. Branstad to have the leachate liquid pumped out from the basin and he did.

DNR field staff went back the next day to the site. The dissolved oxygen levels had improved and the discharge water, however there was the same odor of silage in the water. Mr. Branstad agreed that if the discharge was silage that he was the only one in the area with a silage tile.

Later in September, Mr. Berg returned to the site and found that the tile discharge no longer had the odor or smell of silage.

Mr. Grummer and his staff lead the fish kill assessment and it was determined that the sweet corn silage is what caused the 16 mile long fish kill. Mr. Grummer's enumeration and value of fish were derived from procedures outlines in American Fisheries Society, Special Publication 20 and 567 IAC 113. The number of fish killed was over 31,000 with a monetary value of \$63,000.

This violates Iowa Code section 455.B.186 and 571 IAC 62.1(1).

Outside of the violations stated in the litigation report, Mr. Branstad has been sited for other environmental violations in the past.

Based on the information presented today, we ask that the Commission refer Mr. Branstad to the Attorney General's office for appropriate enforcement action. The Department requests that Mr. Branstad be referred because of the serious water quality violations and substantial fish kill.

[A PowerPoint presentation was given by Kelli Book. It can be located on the DNR's website at: <http://www.iowadnr.com/epc/index.html>]

**Jim Pray**, Attorney representing Monroe Branstad said that he is not here today to challenge any of the lab work. I did duplicate a lot of the work done. There is definitely evidence that seems to suggest that Monty Branstad's farm was the source of the silage release.

Several statements have been made today and by the press that 30,000 fish were killed. I have asked the DNR for proof that 30,000 fish were killed. I've been given the same photos you have before you and I generously counted 28 fish. For \$60,000 some dollars for the 28 fish that have been killed seems excessive under the rules. I have also spoken with Mr. Grummer on how you count fish. I believe it's the American Fisheries Society - Investigation of Fish Kills - 24 which I believe has been superseded by the one DNR is still using.

On page 20 it talks about counting fish in inaccessible parts of the stream. It says as a biologist, you may find it appropriate to speculate on the numbers of dead fish based on your professional knowledge and experience. The purpose of referring this case to the Attorney General's office is to bring it to court law. I will certainly have the opportunity to challenge that but I want to raise it before this Commission that the regulation does incorporate a manual that allows speculation which will not work under the evidentiary rules that are now present in state and federal courts. You're not allowed to speculate as to something like a basis for penalty, as it's supposed to be a scientific investigation. I have not seen any information that more than 28 fish were killed. All the photographic evidence that I have seen show about 30 dead fish. If there were 30,000 dead fish, I would think they would be visible; on the streambanks, caught in snags, on the sandbars, in the grass or shoreline, but they were not there. My point is if the referral is made because it's over the \$10,000 dollar amount and the basis of that calculation is 30,000 dead fish, I would ask the Commission to ask the DNR to produce the evidence so you can make an informed decision.

Commissioners went on to ask questions about the previous fines owed by Mr. Branstad, gallons discharged and how the DNR conducted the fish kill and came up with the numbers.

*Motion was made by Henry Marquard to refer Mr. Branstad to the Attorney General. Seconded by Charlotte Hubbell. Motion carried unanimously.*

**REFERRED**

**FINAL RULE: CHAPTER 22 - CONTROLLING POLLUTION - TITLE V FEE CAP**

Wendy Rains, Environmental Specialist Senior in the Air Quality Bureau presented the following information.

The Department is requesting the Commission adopt an amendment to Chapter 22, "Controlling Pollution" of the 567 Iowa Administrative Code.

The purpose of this rulemaking is to increase the maximum dollar per ton fee (a.k.a. "fee cap") specified in 567 Iowa Administrative Code subrule 22.106(1). The maximum fee that the Commission is currently allowed (by rule) to charge annually from sources subject to the Title V operating permit program is \$39 per ton.

The Title V fee is required for those facilities with potential emissions that exceed the major stationary source thresholds. A major stationary source, also referred to as a Title V facility, is a facility that has the potential to emit 100 tons per year (tpy) or more of any air pollutant; or the potential to emit 10 tpy or more of any individual hazardous air pollutant; or the potential to emit 25 tpy or more of any combination of hazardous air pollutants. Currently Iowa has 273 Title V facilities. Examples of Title V facilities include electric utilities, grain processors, cement plants, and manufacturing operations.

The Title V fee is based on the first 4,000 tons of each regulated air pollutant emitted each year from each major stationary source in the state. Regulated air pollutants that Title V fees are paid on include: particulate matter equal to or less than 10 micrometers in diameter (PM<sub>10</sub>) and particulate matter equal to or less than 2.5 micrometers in diameter (PM<sub>2.5</sub>), sulfur dioxide (SO<sub>2</sub>), nitrogen oxides (NO<sub>x</sub>), volatile organic compounds (VOC), lead (Pb), and 187 hazardous air pollutants (HAP). The Title V fee is used to support the development and administration of activities associated with major sources subject to the Title V Operating Permit Program.

The Department provides an estimated Title V fee each year at the March Commission meeting. Annually on March 31, Title V facilities are required to submit to the Department annual emissions statements for the previous calendar year. The Department totals these emissions and provides that information to the Commission no later than the May meeting to set the fee based on the program budget. Title V funds not expended within a state fiscal year are applied to the next year to reduce the fee.

The Commission approved a Notice of Intended Action at the September meeting for a maximum fee cap of \$62. The Notice of Intended Action was published in the Iowa Administrative Bulletin (IAB) on October 8, 2008, as ARC 7220B. A public hearing was held on November 12, 2008. The Department received one written comment prior to the end of the public comment period on November 13, 2008. One written comment was also received at the public hearing. No oral comments were received. The commenter recommended a fee cap increase that was consistent with a budget projection for a time period shorter than five years. The Department reviewed the fee cap projections for a shorter timeframe. Based on this review the Department has revised the proposed fee cap from \$62 to \$56 which is estimated to provide sufficient funding for three years instead of the original proposal of five years. A public participation responsiveness summary is attached to this agenda item.



The fee cap increase will allow for expected decreases in actual emission rates coupled with expected increases in basic costs for personnel and services, over at least the next three state budget cycles. The fee cap was last raised in April 2003 from \$29 to \$39. The 2003 fee cap increase was anticipated to provide for program increases for three state fiscal years. Through on-going implementation of best fiscal management practices, the prior fee cap increase provided for an additional three years of program growth for a total of six years (SFY 2004-2009).

*Motion was made by Henry Marquard to approve Chapter 22 as presented. Seconded by Susan Heathcote. Motion carried unanimously.*

**APPROVED AS PRESENTED**

### **DRAFT 2008 STATE LIST OF CWA SECTION 303(D) IMPAIRED WATERS**

John Olson, Environmental Specialist Senior in the Watershed Monitoring & Assessment Section presented the following information.

Section 303(d) of the federal Clean Water Act (CWA) requires that each state prepare, every two years, a list of its waters that do not fully meet state water quality standards. Iowa's 2008 draft of impaired waters is part of Iowa's "integrated report." According to U.S. EPA guidance, states should provide a single water quality monitoring and assessment report—the Integrated Report—that combines the water quality reporting requirements of Section 305(b), the impaired waters listing requirements of Section 303(d), and the lakes reporting requirements of Section 314 of the CWA. Integrated reports are to be composed of five categories that are designed to give the public and other stakeholders a comprehensive summary of the water quality status in the state. Category 5 of the Integrated Report is the state's Section 303(d) list of impaired waters. Waters in Category 5 must be prioritized for preparation of a total maximum daily load (TMDL) to determine the load of pollutants that a water can receive and still meet state water quality standards.

Iowa's draft 2008 list of impaired waters contains 441 waterbodies. The draft list is a subset of the approximately 1,120 Iowa waterbodies or waterbody segments (streams, rivers, lakes, and wetlands) assessed for support of state water quality standards by IDNR staff. For comparison, Iowa's final 2006 list of impaired waters contained 279 waterbodies; the final 2004 list contained 225 waterbodies. The draft 2008 list will be available for public notice for a period of 60 days from December 10, 2008 through February 5, 2009. Following the close of the public comment period, IDNR will prepare a responsiveness summary of comments received. Changes in the list will be made based on public comments, and IDNR will submit the revised draft to U.S. EPA Region 7 for review and final approval.

A handout of “The DRAFT 2008 Iowa list of Section 303(d) Impaired Waters” was distributed to Commissioners.

[A PowerPoint presentation was given by John Olson. It can be located on the DNR’s website at: <http://www.iowadnr.com/epc/index.html>]

<b>INFORMATION</b>
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### **CLEAN WATER AND DRINKING WATER STATE REVOLVING LOAN FUND – FY 2009 INTENDED USE PLANS, THIRD QUARTER UPDATES**

Patti Cale-Finnegan, with the DNR Water Quality Bureau presented the following information.

Commission approval is requested for third quarter updates to the Clean Water State Revolving Fund (CWSRF) and Drinking Water State Revolving Fund (DWSRF) Intended Use Plans (IUPs) for FY 2009. The Iowa SRF continues to grow and expand its role as one of the primary funding sources for water quality and protection of public health. Since 1989, the Iowa SRF has loaned more than \$1 billion.

The Iowa SRF is operated through a coordinated partnership between the Department of Natural Resources (DNR) and the Iowa Finance Authority (IFA). DNR administers the environmental and permitting aspects of the programs, with IFA providing financial assistance including loan approval and disbursements.

The CWSRF provides low-interest loans for wastewater and storm water infrastructure improvements and nonpoint source water quality projects. The third quarter update includes project requests for \$18.5 million.

This brings the current requests for FY 2009 to \$402.6 million, including \$33.7 million for non-point source projects. There is typically a lag between when projects are placed on the IUP and funding is disbursed. It is anticipated that approximately \$204 million will be disbursed during FY 2009 for CWSRF projects. To date this fiscal year, \$50.8 million dollars in infrastructure loans have been signed, and \$4.6 million in nonpoint source assistance has been disbursed.

An innovative use for CWSRF is proposed in this third quarter update. In August 2007, the U.S. Environmental Protection Agency issued a white paper entitled, “The Clean Water State Revolving Fund Program: Tapping its Untapped Potential.” The purpose of the paper was to clarify the types of projects that are eligible for CWSRF and to promote the use of the fund to address broad environmental issues. According to EPA:

“Certain capital costs to power publicly owned treatment works (POTWs) are eligible. This may include energy efficient pumps, backup generators and other energy utilizing capital necessary to meet the water quality purpose of the POTW. Planning activities, such as energy audits, that have a reasonable prospect of resulting in a capital project are

eligible. *In addition, the pro-rata share of capital costs of offsite publicly owned clean energy facilities that provide power to a POTW are eligible.*" (italics added)

Osage Municipal Utilities has requested a loan for a portion of the costs of a wind turbine that will feed electricity into the local distribution system which powers the Osage wastewater treatment facility. The total cost of the turbine is \$3.9 million. The annual usage of the wastewater facility corresponds to 15% of the projected output of the turbine, therefore the loan request of \$596,000 is a pro-rata share of 15% of the total project costs.

The DWSRF provides loans to public water supplies to protect public health and improve infrastructure. The third quarter update includes project requests for \$11.7 million. This brings the current requests for FY 2009 to \$132.2 million. To date this fiscal year, \$25.2 million dollars in infrastructure loans have been signed. It is anticipated that approximately \$83 million will be disbursed during FY 2009 for DWSRF projects.

The Sources and Uses tables (below) for both CWSRF and DWSRF show that funds are available or obtainable to provide anticipated disbursements. Loan disbursement rates are estimated based on previous experience with how quickly projects get ready for funding and the pace of reimbursement requests.

The IUPs will be updated once more for the fourth quarter of FY 2009.

A public meeting was held October 30, 2008 to receive comments on the proposed IUP updates. No oral comments were provided at the hearing. The written comment period closed on November 6, 2008. No written comments were received.

**Iowa CWSRF State Fiscal Year 2009 3Q  
Estimated Funding Sources and Funding Uses  
As of 10/16/08**

**Funding Sources**

Funds Available in Equity and Loan Accounts	\$58,938,000	*
Funds Available Through Issuance of Bonds	\$114,076,750	**
Federal Fiscal Year (FFY) 2008 Capitalization Grant	\$9,203,000	
State Match for FFY 2008 Capitalization Grant	\$1,841,000	**
Equity Fund Interest Earnings during State Fiscal Year (SFY) 2009	\$1,250,000	
Net Repayments on Equity Fund Loans during SFY 2009	\$9,143,000	
Funds Released from Indentures to Equity Fund (available for loans)	<u>\$10,190,000</u>	
Total Funding Sources	\$204,641,750	

**Funding Uses**

Undisbursed Amounts Committed to Existing Loans (65% disbursement rate)	\$73,103,550
Section 212 Project Requests (FONSI issued; 40% disbursement rate)	\$50,434,400

Section 212 Project Requests (FONSI not issued; 20% disbursement rate)	\$42,509,800
Planning & Design Requests (approved on previous IUP)	\$5,154,000
Planning & Design Requests (new request this IUP)	\$3,968,000
Non-point Source Program Assistance	\$29,104,000
Program Administration From FFY 2008 Capitalization Grant	\$368,000
Total Funding Uses	<hr/> \$204,641,750

\* Cash Available for disbursements as of 10/16/08

\*\* Estimated date of bond issuance 12/17/08

**Iowa DWSRF State Fiscal Year 2009, 3Q  
Estimated Funding Sources and Funding Uses  
As of 10/16/08**

Funding Sources for Loans

Funds Available in Equity and Loan Accounts	\$8,375,000	*
Funds Available Through Issuance of Bonds	\$53,495,000	**
Federal Fiscal Year (FFY) 2007 Capitalization Grant available for loans	\$2,573,000	
State Match for FFY 2007 Capitalization Grant	\$0	
Federal Fiscal Year (FFY) 2008 Capitalization Grant available for loans (est.)	\$7,611,000	
State Match for FFY 2008 Capitalization Grant (est.)	\$2,030,000	**
Equity Fund Interest Earnings during State Fiscal Year (SFY) 2009	\$450,000	
Net Repayments on Equity Fund Loans during SFY 2009	\$3,625,000	
Funds Released from Indentures to Equity Fund (available for loans)	\$5,002,000	
Total Funding Sources for Loans	<hr/> \$83,161,000	

Funding Uses for Loans

Undisbursed Amounts Committed to Existing Loans (70% disbursement rate)	\$39,124,400
Project Requests (FONSI issued; 55% disbursement rate)	\$25,531,000
Project Requests (FONSI not issued; 20% disbursement rate)	\$16,961,600
Planning & Design Requests (approved on previous IUP)	\$1,144,000
Planning & Design Requests (new request this IUP)	\$400,000
Total Funding Uses for Loans	<hr/> \$83,161,000

\* Cash Available for disbursements as of 10/16/08

\*\* Estimated date of bond issuance 12/17/08

Funding Sources for Set Asides

Available Balance under Existing Capitalization Grants for set asides:	
Administration	\$1,602,000

Small Systems Technical Assistance	\$401,000
State Program	\$953,000
Other Authorized Activities	<u>\$4,841,000</u>
Total Funding Sources for Loans	\$7,797,000

## Funding Uses for Set Asides

Set Asides:	Administration	\$1,602,000
	Small Systems Technical Assistance	\$401,000
	State Program	\$953,000
	Other Authorized Activities	<u>\$4,841,000</u>
Total Uses for Set Asides		\$7,797,000

Susan Heathcote asked about backup generators for wastewater facilities and if there were any federal funds available.

*Motion was made by David Petty to approve the intended use plan as presented. Seconded by Sue Morrow. Motion carried unanimously.*

**APPROVED AS PRESENTED**

Director Leopold gave a 5 minute update on the budget status based on the press release from the Governor's office.

### **PROPOSED RULE: RESTRICTING SURFACE APPLICATION OF MANURE ON FROZEN OR SNOW-COVERED GROUND**

Claire Hruby presented the following information.

At the June meeting, the Commission requested that the Department prepare draft rules that would reasonably restrict application of manure on frozen or snow-covered ground in order to protect water quality. As directed, the Department has reviewed available research, compared policies of nearby states, and consulted with a wide range of stakeholders including scientists and extension experts, producers, environmental groups, field office staff, drinking water utility representatives, lawyers, and other interested parties.

The Department has drafted rule changes that apply to confinements and open feedlots to address the Commission's request. All new items are highlighted in blue and all changes to existing rules are underlined. All other text is provided for context.

While the draft rule changes summarize the practices and conditions that will be prohibited, there are questions regarding what in-field measurements and online resources can be used to ensure compliance. The Department encourages producers and field staff to use practical in-field tests to determine slope, separation distances, or whether ground is frozen or snow-covered, but online

resources including the Iowa Environmental Mesonet/ISU Ag Climate website, the National Weather Service, NRCS Web Soil Survey, and the DNR's AFO Siting Atlas are also available for planning purposes.

The issue of emergency application must also be considered. We have not drafted any rules regarding emergency applications. We recognize that there will be times when pipes break or other situations occur that require immediate emptying of a pit. If other options are not available, application on frozen or snow-covered ground may be necessary to avoid more severe environmental impacts. In these situations, the time necessary to request and issue a formal variance may not be available. Our preference is to treat these emergencies like we do other emergency manure applications. An individual must notify the DNR Field Office, and the field office staff can consult with the individual, but ultimately, the individual is still responsible for any water quality violations that result. The fact that proper notification was given and greater environmental impacts were avoided will be considered when determining what sort of enforcement action is appropriate.

Paul Johnson stated his concerns that we will exclude a lot of farming practices that many of us would like to see encouraged by simplifying some of the rules. I like the rules but I would like to make sure we leave some flexibility.

Claire Hruby said that we have been lead to believe early on that only a few CAFOs with liquid operations will be affected.

Henry Marquard thanked Claire and the involved DNR staff for all their work in generating a rule.

Paul Johnson suggested that the field staff needs to be prepared for guidance to the public on this rule. I realize the DNR is short staffed when it comes to field enforcement, is there any way the NRCS offices would help with the enforcement?

Wayne Gieselman said that he doesn't believe the NRCS would want to be involved.

Charlotte Hubbell suggested that we exclude solid manure with deep bedding from hoop barns from being unable to apply between Feb 15<sup>th</sup> to April 15<sup>th</sup>. Deep-bedded barns is a practice we would want to encourage.

David Petty suggested that we use the term "under roof" rather than hoop. He was also not comfortable with the February date. So he suggested that we remove the dates completely, since the weather is very unpredictable and let the function of the rules accomplish the same thing.

Richard Leopold asked where the dates came from?

Claire Hruby said that they came from research from ISU and Discovery Farms in Wisconsin. Both show that late winter application has the highest potential for nutrient runoff because the ground is totally impermeable at that point and the potential for runoff is highest.

Ms. Hruby believed that we would be somewhat okay with exempting the solid manure with deep bedding but we would want to leave the dates in for the liquid application.

Richard Leopold said that he would like to see the recommendations made today by Petty and Johnson regarding the scraped snow-and-ice and solid manure with deep bedding. Change language from “hoop” to “under roof”.

Claire Hruby said that she will make the changes and then run it by all of the stakeholder groups for their input. She will keep the Commissioners up to date on the feedback.

[A PowerPoint presentation with complete details on the timeline and impacts was given by Claire Hruby. It can be located on the DNR's website at: <http://www.iowadnr.com/epc/index.html>]

<b>INFORMATION</b>
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## **PROPOSED RULE -CHAPTER 65 – DEFINITIONS AND REGULATIONS PERTAINING TO NPDES PERMITS**

Gene Tinker, Coordinator of the Animal Feeding Operations of the Environmental Services Division presented the following item.

The proposed rules will amend 567 Iowa Administrative Code Chapter 65. The purpose of the amendments is to make corrections so the administrative rules are equivalent to the Code of Iowa and consistent with federal law. The proposed corrections are made to definitions, land application practices to prevent environmental damage and nutrient management plan requirements with associated phosphorus index implementation. In addition, changes are made where the rules indicated specific dates which are now past.

EPA received a petition asking that they remove the Department's authority to manage the NPDES program in the state of Iowa. The petitioners felt that Iowa was not diligent in their operations and therefore asked for the program to be removed. EPA has gone through the petition and did come to us with areas where our statutes and administrative rules were not in compliance with federal law. So the Department worked with industries and others to come up with changes that needed to be made. We are now implementing those changes from the code and additional changes pointed out by EPA. I also added in stockpiling requirements thinking it was the right time. We have since decided that that was not a good idea after all, so we are now asking you to remove item 6. Stockpiling requirements. Stockpile rules will be included in another rulemaking.

<b>INFORMATION</b>
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## **MONTHLY REPORTS**

Wayne Gieselman, Division Administrator, Environmental Protection Division, presented the following items.

The following monthly reports have been distributed for the Commission's information and have been posted on the DNR website under the appropriate meeting month: <http://www.iowadnr.com/epc/index.html>

1. Rulemaking Status Report
2. Variance Report
3. Hazardous Substance/Emergency Response Report
4. Manure Releases Report
5. Enforcement Status Report
6. Administrative Penalty Report
7. Attorney General Referrals Report
8. Contested Case Status Report
9. Waste Water By-passes Report

## **GENERAL DISCUSSION**

Wayne Gieselman said that there are ARRC meetings going on today and tomorrow. Today will mainly be the smoking ban legislation. Tomorrow we will be presenting before them the Wastewater design standard changes, tank rules and anti-degradation rules.

Commissioners went through and discussed changes to the DRAFT 2008 Annual Report and Recommendations to the Legislators. Suggestions and changes made by the Commission will be incorporated by Henry Marquard and a final copy will be distributed before the January meeting.

## **NEXT MEETING DATES**

The Commission agreed to move the next January meeting date to January 13<sup>th</sup> with the legislative breakfast following on the 14<sup>th</sup>.

Commissioners also expressed an interest in meeting with the NRC Commissioners during this time for a joint meeting and/or dinner.

## **ADJOURNMENT**

With no further business to come before the Environmental Protection Commission, Vice Chairperson Charlotte Hubbell adjourned the meeting at 4:48 p.m., Tuesday, December 9, 2008.



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Richard A. Leopold, Director

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Henry Marquard, Chair

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